

Respondent disputes whether claimant suffered accidental injury arising out of and in the course of his employment and whether claimant provided timely notice to respondent or had just cause for exceeding the ten-day limit of K.S.A. 44-520. The Appeals Board, therefore, must first determine a date of accident. Claimant argues for an accident date beginning June 1999 and continuing each and every working day through September 13, 1999, his last date worked. Claimant continued working and performed his

regular job duties until that date. Claimant testified to a gradual worsening of his symptoms during this period. Respondent, citing Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999), agrees that the date of accident should be the last day worked. Therefore, September 13, 1999 will be treated as the date of accident.

The claimant admits to not having advised respondent before October 25 or 26, 1999, of the injury to his hands and the work related nature of that injury. As this was more than ten days beyond the accident date, the Appeals Board finds claimant failed to provide notice of the accident within ten days pursuant to K.S.A. 44-520.

The Appeals Board must next determine whether claimant had just cause for failing to timely advise respondent of the accident. In Rasmussen v. Metric Construction, WCAB Docket No. 225,773 (Nov. 1997), the Appeals Board discussed several factors which should be considered in determining whether just cause exists. First, the fact finder must consider the nature of the accident, including whether the accident occurred as a single traumatic event or developed gradually. In this instance, claimant did not describe a specific trauma or accident. Rather he described an onset of symptoms in June 1999, when he noticed a tingling in his hands. This symptom worsened until claimant was unable to continue working and took a medical leave of absence. This indicates the nature of the accident was repetitive trauma and not a single traumatic event. This is relevant to a determination of whether claimant was aware that he sustained an injury or accident on the job. Claimant described an onset of hand symptoms in June but when he requested medical leave in September he related that his health condition was insomnia and depression. This was the diagnosis he had been given. Claimant now attributes his insomnia, at least in part, to numbness and tingling in his hands at night which he now knows is from the carpal tunnel syndrome.

It is also relevant to consider the nature and the history of claimant's symptoms. Claimant related that he was having trouble sleeping and he felt tingling in his hands at work when "flipping the boards." He felt depressed because he could not do his job as he wanted to. Again, the absence of an onset of symptoms in relation to a specific event or with severe limitations resulting immediately is significant. It is also significant that claimant's symptoms manifested themselves at home and at work, rather than just at work, and were not associated with any unusual exertion or trauma. However, it is also significant that claimant's symptoms sometimes resolved after a period of time on weekends, but would worsen as the work week progressed, because this should have alerted claimant to an association between his symptoms and his work activities. Nevertheless, the Appeals Board finds claimant was not aware that he had sustained a work related accident or injury that he needed to report to his employer, until after he left work and was eventually diagnosed with carpal tunnel syndrome on or about October 19, 1999.

In cases where it appears the claimant was aware he or she had suffered a work related accident, the Appeals Board will also look to whether the employee was aware or should have been aware of the requirements of reporting a work related accident, and whether respondent posted notices required by K.A.R. 51-12-2(a), which states in part:

Employers operating under this act shall post notice in one or more conspicuous places advising employees what to do in case of injury.

In this instance, the record does not reflect whether or not a Form 40 was posted by respondent advising claimant of the obligations under the Workers Compensation Act. Nevertheless, claimant was advised by respondent that all accidents were to be reported immediately. Furthermore, claimant had previously suffered a work related accident and had a prior workers compensation claim. Therefore, the Appeals Board finds that claimant was aware that all accidents were to be reported immediately. In this case, however, claimant's injury was not caused by what would be readily known as an accident, within the common meaning of that word.

When just cause is an issue, the above factors should be considered on a case-by-case basis with each case being determined on its own facts. The Appeals Board finds, in this instance, persuasive evidence establishing that claimant was not aware he suffered an injury and was not aware his medical condition was from a work related accident until he was diagnosed with carpal tunnel syndrome on October 19, 1999. The Appeals Board finds, based upon the evidence presented to date in this case, that claimant has proven just cause for not notifying respondent within ten days of the date of accident. He did give notice within 75 days as is required by K.S.A. 44-520. Therefore, the notice statute does not operate as a bar to this proceeding.

The medical evidence compiled to date is persuasive that claimant has bilateral carpal tunnel syndrome, worse on the left, and that claimant's work activities caused the onset of the carpal tunnel syndrome condition. The Appeals Board, therefore, also finds accidental injury arising out of and in the course of claimant's employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order dated February 1, 2000, entered by Administrative Law Judge Steven J. Howard, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS
Mark J. Hoffmeister, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director